

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEECO LLC ET AL.,

Plaintiffs,

-v-

KARTRI SALES COMPANY, INC.,

Defendant.

23 Civ. 2003 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received counsels' helpful letters (Dkts. 27, 28, 30) in response to the Court's order (Dkt. 26) soliciting views as to the interplay between the pending Federal Circuit appeal in the *Focus Products* litigation, 15 Civ. 10154 (PAE), and the motion to dismiss by defendant Kartri Sales Co., Inc. ("Kartri"), that has been filed and briefed in this case (Dkts. 12–14, 18–19, 23). The parties agree—as does the Court—that there is a substantial overlap between the appeal and the motion to dismiss. The resolution of the appeal has the potential to require re-briefing of the motion to dismiss, or, potentially, the filing of an amended complaint that would moot the motion to dismiss as presently formulated. No productive purpose is therefore served by resolving the pending motion to dismiss.

The Court accordingly stays this litigation pending resolution of the *Focus Products* appeal. The Court denies Kartri's pending motion to dismiss, without prejudice to Kartri's right to re-file that motion, or to make a reformulated motion to dismiss, following the appeal. The Clerk of Court is respectfully directed to terminate the motion pending at Docket 12.

The Court declines the request of plaintiffs Keeco LLC et al. ("Keeco") that Kartri be ordered to post a bond during the pendency of the *Focus* appeal. This ruling is without prejudice

to Keeco's right to seek the posting of a bond following the resolution of the appeal. Following resolution of the appeal, however, the Court's intention is to litigate this case on an expedited basis, in recognition of the delay of this litigation caused by the stay.

The Court further directs the following:

1. Immediately upon issuance of the appellate panel's decision in the *Focus Products* appeal, counsel in this case are to file a copy of that decision on the docket of this case.
2. Within five (5) business days of the appellate panel's decision, counsel in this case are to meet and confer about the effect of that decision on this litigation.
3. Within 10 business days of that decision, counsel in this case are to file a joint letter on the docket of this case setting forth their views as to the next steps in this litigation, including, without limitation, whether Keeco intends to file an amended complaint, and if not, whether Kartri intends to renew its earlier motion to dismiss or file a revised such motion. The parties' letter should also propose an expedited timetable for such filings.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: October 18, 2023
New York, New York